

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of )  
 CARY L. QUEEN ET AL. ) Examiner: M. Marks  
 Serial No.: 07/310,252 ) Art Unit: 185  
 Filed: February 13, 1989 ) PETITION FOR WITHDRAWAL  
 For: DESIGNING IMPROVED ) OF HOLDING OF ABANDONMENT  
 HUMANIZED IMMUNOGLOBULINS )  
 San Francisco, CA 94105

Commissioner of Patents and Trademarks  
 Washington, D. C. 20231

Sir:

In response to the Notice of Abandonment, mailed June 1, 1990 in the above referenced case, which notice was sent for failure to respond to an Office letter mailed Nov. 7, 1989, Applicants hereby petition for a withdrawal of the holding of abandonment, on the ground of non-receipt of the office action. Applicants respectfully request that the Notice of Abandonment be withdrawn, and that the November 7, 1989 office action be sent again, with additional time for response.

This petition is filed pursuant to MPEP § 711.03(c), and is supported by verified statements of Debra B. Hudson and Michele A. Simone, docket clerks for Applicants' attorneys, at Townsend and Townsend, San Francisco, CA. This petition is further supported by verified documentary evidence showing non-receipt of the office action in question, and further showing that another office action in a related case, mailed the same day, was received promptly and was responded to in a timely manner.

The facts surrounding non-receipt of the Office Action are outlined below:

1. U.S. Patent Application Serial No. 07/290,975 (the '975 application), was filed on December 28, 1988.
2. The above-referenced U.S. Patent Application Serial No. 07/310,252 (the '252 application), a continuation-in-part of the '975 application, was filed on February 13, 1989. The '975 application remains pending.

3. An office action requiring restriction or election in the '975 case, mailed November 7, 1989, was received by Applicants' attorneys on November 10, 1989. See Exhibit A, which is a true and complete copy of the November 7, 1989 office action in the '975 case, showing a date of receipt of November 10, 1989. See also Exhibit B, which is a true and complete copy of a print-out of Applicants' attorneys' docket sheet for the '975 case, printed out on June 8, 1990, and having an entry under the heading "P.O. Action" of "110789", showing receipt of an office action dated November 7, 1989.
4. The PTO reports that on the same day that the office action in the '975 case was mailed (November 7, 1989), an office action requiring restriction or election was also mailed in the related '252 case. See Exhibit C, which is a true and complete copy of the Notice of Abandonment in the '252 case, showing abandonment for failure to respond to an office action dated November 7, 1989.
5. No office action was received by Applicants or their attorneys, at that time, or at any time, in the '252 case. See Exhibit D, which is a true and complete copy of a print-out of Applicants' attorneys' docket sheet for the '252 case, printed out on June 8, 1990, showing no entries under the heading "P.O. Action".
6. A timely response to the office action in the '975 case was mailed to the Patent Office on March 7, 1990. See Exhibit E, which is a true and complete copy of Applicants' response to the November 7, 1989 office action in the '975 case. The response was received by the Patent Office on March 12, 1990. See Exhibit F, which is a true and complete copy of the date-stamped postcard showing receipt of the response in the PTO on March 12, 1990.
7. On or about May 17, 1990, Applicants' attorneys received a telephone call from Examiner Marks, acknowledging receipt of the response in the '975 case, and stating that no response had been received in the '252 case. This was the first

indication to either Applicants or Applicants' attorneys that there had been an office action in the '252 case.

8. On June 4, 1990, Applicants' attorneys received a Notice of Abandonment for failure to respond to the November 7, 1989 office action in the '252 case. The Notice of Abandonment was mailed on June 1, 1990. See Exhibit C, showing a date of receipt of June 4, 1990.
9. Applicants diligently filed this petition upon receipt of the Notice of Abandonment.

As is apparent from these facts, there were two office actions in the related '975 and '252 cases, mailed on the same day, each requiring an election or restriction. Applicants' attorneys received only one of these actions (as evidenced by the entries on the computerized docket sheets, Exhibits B and D). Applicants timely responded to the one office action that was received. Had Applicants received or known of the existence of the second office action, it too would have been responded to in a timely way.

Applicants' attorneys have reviewed their docketing and mail handling procedures to assure that the office action had in fact never been received. The following facts reflect that review. These facts are further verified in the accompanying Verified Statements of Debra B. Hudson and Michele A. Simone, docket clerks for Applicants' attorneys at Townsend and Townsend, San Francisco, CA.

1. The following procedures and controls are utilized by Applicants' attorneys with respect to correspondence received from the Patent Office (see the accompanying Verified Statement of Debra B. Hudson):

- i. When communications from the PTO are received in the mailroom, they are immediately date-stamped, and are then sent to the appropriate docketing department (U.S. or foreign). Mail is delivered from the mailroom directly to the docketing department early each morning.

444 82 93 0005

ii. On receiving the PTO communication in the docketing department, a docket clerk will enter the serial number of the application into the computer, to call up the appropriate docket file.

iii. The docket clerk will put the working attorney's initials and the firm file number in red on the upper right hand corner of the document.

iv. The docket clerk will also place a red stamp reading "Response Due" on the front of the office action, and write in large red characters the date the response is due.

v. The docket clerk will then enter the PTO action and date, and the response due date into the computer.

vi. The PTO communication is then immediately forwarded to the working attorney.

vii. Entries are also made in the computer docket when communications are sent from the working attorney to the PTO.

2. The above procedures and controls were followed in the situation at hand in the following way (see the accompanying Verified Statements of Debra B. Hudson and Michele A. Simone):

i. The docketing department received an office action in the case of Application Serial No. 07/290,975, which had been mailed on November 7, 1989, and had been date-stamped in the mailroom as received on November 10, 1989.

ii. Upon receipt of that document, the docket clerk (Debra B. Hudson) stamped and wrote the "Response Due" date (December 7, 1989) on the front of the document in red ink, wrote the working attorney's initial and the firm file number (WMS 11823-8) in the top right hand corner of the front page, and entered the relevant information into the computer docket. She signed her initials on the front page after the Response Due date (DBH).

iii. No office action was entered into the computer docket on that date, or any other date, for the case of Application Serial No. 07/310,252.

iv. The docketing department received and entered in the computer docket a Notice of Abandonment for Application Serial No. 07/310,252, for failure to respond to an office action allegedly mailed November 7, 1989. The document was date-stamped as received on June 4, 1990. Michele A. Simone received the document, and wrote the firm file number and working attorney's initials in red in the top right hand corner of the document.

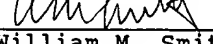
v. Ms. Simone immediately checked to see if there was any record of receipt of the November 7, 1989 office action. There was none. She then forwarded the Notice of Abandonment to the working attorney.

The above facts show that (1) Applicants' attorneys' procedures and controls are adequate to handle communications received from the PTO, and that (2) Applicants' attorneys never received the November 7, 1989 office action in the above-identified application.

Applicants therefore request that the holding of abandonment be withdrawn pursuant to MPEP § 711.03(c), and that the November 7, 1989 office action be sent again, with additional time for response. As this petition has been filed promptly after the Notice of Abandonment, no terminal disclaimer is required.

Respectfully submitted,

TOWNSEND and TOWNSEND

By   
William M. Smith  
Reg. No. 30,223

Date: 6-20-90

Telephone: (415) 326-2400

One Market Plaza  
Steuart Street Tower  
San Francisco, CA. 94105



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
07/290,975	12/23/88	QUEEN	118236

WILLIAM M. SMITH  
TOWNSEND AND TOWNSEND  
STEUART STREET TOWER, ONE MARKET PLAZA  
SAN FRANCISCO, CA 94105

EXAMINER	
MARKS, H	
ART UNIT	PAPER NUMBER
185	2

**Response Due** December 7, 1989

DATE MAILED:

11/07/89

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 0 month(s), 30 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.       | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                  |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474 | 6. <input type="checkbox"/> _____   |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-26 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☐ Claims \_\_\_\_\_ are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☒ Claims 1-26 are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.
8. ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).
10. ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner, ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved, ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections **MUST** be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.
12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other \_\_\_\_\_

Serial No. 07/290975  
Art Unit 185

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-20 and 22-24, drawn to a composition comprising a human-like immunoglobulin specific for p55 Tac (i.e., IL-2), classified in Class 424 subclass 85.

II. Claim 21, drawn to a method of treating T-cell mediated disorders in humans, classified in Class 424, subclass 85.

III. Claims 25-26, drawn to polynucleotides and cells transformed with same, classified in Class 536, subclass 27 and Class 435 subclass 240.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group III and Group I are related as mutually exclusive species in intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful other than to make the final product (MPEP section 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP section 806.04(h)).

In the instant case, the intermediate product is deemed to be useful as a diagnostic probe and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. §103 of the other invention.

Inventions Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be

Serial No. 07/290975  
Art Unit 185

used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product such as non-recombinant immunoglobulins specific for Tac. Also the product as claimed can be used in a materially different process of using that product such as in in vitro diagnostic to identify Tac presenting cell populations.

Inventions Group I and Group III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different products or (2) that the product as claimed can be made by another and materially different process (MPEP 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as chemical synthesis or by production in humans.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and divergent subject matter, and because the searches for the individual Groups are not coextensive, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Serial No. 77290975  
Art Unit 185

A telephone call was made to William Smith on October 1, 1989 to request an oral election to the above restriction, but did not result in an election being made.

Applicant is reminded that upon the cancellation of a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Any inquiry concerning this communication should be directed to Michelle Marks, Ph.D. whose telephone number is 703-595-0664.

*MSA*

THOMAS G. WISEMAN  
SUPERVISORY PATENT EXAMINER  
ART UNIT 185

Express Mail No.  
B22186637W

**PATENT APPLICATION  
FILING ACKNOWLEDGEMENT**

File No.: 11823-9

Attorney: WMS

Queen & Harold Edwin Selick  
IMPROVED HUMANIZED IMMUNOGLOBULINS

Power of Attorney  
Declaration & Power of Attorney  
☒ Small Entity Decl.

29  
5  
10

Date of receipt of the enclosed  
in this card to addressee.

B22186637W

POST OFFICE  
TO ADDRESSEE

For Customer Use		For Postal Use	
FROM: WILLIAM M. SMITH 11823-9 275 LYTTON AVENUE PALM ALTO CA 94061-1701		ORIGIN Post Office 11823-9 Postage 12.00	
Express Mail Account No.		Destination 11823-9 Postage 12.00	
Federal Agency Control No.		Return Postage 12.00	
International On Demand Country Code		Total Postage 12.00	
Accepted for mail day after delivery next day delivery (Monday) International On Demand Country Code		ACCEPTANCE Postage 12.00	

**CUSTOMER RECEIPT**

TO: COMMISSIONER OF PATENTS AND TRADEMARKS WASHINGTON DC 20231-9999	Telephone Number: _____
WAIVER OF SIGNATURE	
I hereby declare to be made without obtaining the signature of the owner or the assignor of the invention, and I understand the delivery of this card to the addressee is sufficient to constitute valid proof of delivery.	

SEE REVERSE FOR SERVICE GUARANTEE,  
INSURANCE COVERAGE AND CLAIMS

Express Mail No. B22186637W  
PATENT APPLICATION  
FILING ACKNOWLEDGEMENT

Attorney: WMS  
File No.: 11823-9  
Inventor(s): Cary L. Queen & Harold Edwin Selick  
Title: DESIGNING IMPROVED HUMANIZED IMMUNOGLOBULINS

Declaration Power of Attorney  
Combined Declaration & Power of Attorney  
XX Assignment XX Small Entity Decl.  
XX Assignment XX Small Entity Decl.  
No. Pages of Spec.: 29  
No. Pages of Claims: 5  
No. Sheets Dwg: 10

11/30/89

please stamp the date of receipt of the enclosed  
documents and return this card to addressee.

FILING RECEIPT



WMS 11023  
UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOTAL	IND CL
07/310,252	02/13/89	185	\$ 279.00	118239	10	2	3

WILLIAM M. SMITH  
TOWNSEND AND TOWNSEND  
STEUART STREET TOWER  
ONE MARKET PLAZA  
SAN FRANCISCO, CA 94105

Receipt is acknowledged of the patent application identified herein. It will be considered in its order and you will be notified as to the examination thereof. Be sure to give the U.S. SERIAL NUMBER, DATE OF FILING, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this transmittal.

Applicant(s)

CARY L. QUEEN, PALO ALTO, CA; HAROLD E. SELICK, BELMONT, CA.

CONTINUING DATA-THIS APPLN IS A CIP OF 07/290,975 12/28/88

FOREIGN FILING LICENSE GRANTED 03/03/89

\* SMALL ENTITY \*

TITLE

DESIGNING IMPROVED HUMANIZED IMMUNOGLOBULINS

PRELIMINARY CLASS: 435

(see reverse)


 WMS 11823-3  
 UNITED STATES DEPARTMENT OF COMMERCE  
 Patent and Trademark Office

 Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
 Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
07/290,975	12/28/88	QUEEN	118236

 WILLIAM M. SMITH  
 TOWNSEND AND TOWNSEND  
 STEUART STREET TOWER, ONE MARKET PLAZA  
 SAN FRANCISCO, CA 94105

EXAMINER	
MARKS, R	
ART UNIT	PAPER NUMBER
185	2

**Response Due** December 7, 1989

DATE MAILED:

11/07/89

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

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| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449             | 4. <input type="checkbox"/> Notice of informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474 | 6. <input type="checkbox"/> _____   |

## Part II SUMMARY OF ACTION

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2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☐ Claims \_\_\_\_\_ are rejected.
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6. ☒ Claims 1-26 are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.
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12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other \_\_\_\_\_

CANADIAN- N Y OR N

PATENT APPLICATION

80

APPLICANT PROTEIN DESIGN LABS, INC.

FILE# 008

CLIENT# ATIN: CONTROLLER

PAT. APP: HUMANIZED ANTIBODIES

11823 2375 GARCIA AVENUE

ENTRY DATE 123088

ATTY WMS WORK ATTY'S 000 000

MAIL DATE 122888

TYPE (L/D/P)

DISCL SENT( /Y) Y

INVNTRS QUEEN, CARY

SELICK, HAROLD

FILING DATE 122888

SERIAL# 290975

GROUP 185

FIRST PUBLIC USE

REEL: 5014

FRAME: 848

RECRD DATE 122888

ASSIGNEE PROTEIN DESIGN LABS

TITLE OF INVENTION: NOVEL IL-2 RECEPTOR-SPECIFIC HUMAN IMMUNOGLOBULINS

P.O. ACTION 110789

RESPONSE DUE 120789

EXT

AMENDMENT DATED 30790

STATUS DATE 122690

C=COMPLETE

P.O. ACTION

RESPONSE DUE

EXT

AMENDMENT DATED

STATUS DATE

C=COMPLETE

P.O. ACTION

RESPONSE DUE

EXT

AMENDMENT DATED

STATUS DATE

C=COMPLETE

NOTICE OF APPEAL DUE

NOTICE OF APPEAL EXT

EXT

APPEAL BRIEF DUE

APPEAL BRIEF EXT

EXT

INFORMAL

INFORMAL STATUS

\*N=NO MAINT. FEE

N=NO FOR FILE

PARTS DUE

DRAWINGS DUE

PAID

ABANDONED

ALLOWED

ISSUE FEE DUE

PAID

ABANDONED

ISSUED

PATENT#

DELIVERED

PAID

ABANDONED

DISB DATE

CODE

AMT

DESC

ABANDONED

CK1 FOR DIFF #

CK5 = OTHER ACTIONS

CK7 TO RESTART W/O CHANGE



# UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Office

Address : COMMISSIONER OF PATENTS AND TRADEMARKS  
 Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
07/310,252	02/13/89	QUEEN	118239

RECEIVED

WILLIAM M. SMITH  
 TOWNSEND AND TOWNSEND  
 STEUART STREET TOWER  
 ONE MARKET PLAZA  
 SAN FRANCISCO, CA 94105

EXAMINER	
MARKS IN ART UNIT	PAPER NUMBER
	3

DATE MAILED: 185

06/01/90

## NOTICE OF ABANDONMENT

This application is abandoned in view of:

- ☐ Applicant's failure to respond to the Office letter, mailed 07 November 1989.
- ☐ Applicant's letter of express abandonment which is in compliance with 37 C.F.R. 1.138.
- ☐ Applicant's failure to timely file the response received \_\_\_\_\_ within the period set in the Office letter.
- ☐ Applicant's failure to pay the required issue fee within the statutory period of 3 months from the mailing date of \_\_\_\_\_ of the Notice of Allowance.

☐ The issue fee was received on \_\_\_\_\_.

☐ The issue fee has not been received in Allowed Files Branch as of \_\_\_\_\_.

In accordance with 35 U.S.C. 151, and under the provisions of 37 C.F.R. 1.316(b), applicant(s) may petition the Commissioner to accept the delayed payment of the issue fee if the delay in payment was unavoidable. The petition must be accompanied by the issue fee, unless it has been previously submitted, in the amount specified by 37 C.F.R. 1.17 (I), and a verified showing as to the causes of the delay.

If applicant(s) never received the Notice of Allowance, a petition for a new Notice of Allowance and withdrawal of the holding of abandonment may be appropriate in view of *Delgar Inc. v. Schuyler*, 172 U.S.P.Q. 513.

- ☐ Applicant's failure to timely correct the drawings and/or submit new or substitute formal drawings by \_\_\_\_\_ as required in the last Office action.  
☐ The corrected and/or substitute drawings were received on \_\_\_\_\_.
- ☐ The reason(s) below.

RICHARD A. SCHWARTZ  
 PRIMARY EXAMINER  
 ART UNIT 121/15

## CANADIAN- N Y OR N- PATENT APPLICATION

80

APPLICANT PROTEIN DESIGN LABS, INC.

FILE# 009

CLIENT# ATTN: CONTROLLER

CIP APP: DESIGNING IMPROVED

11823 2375 GARCIA AVENUE

ENTRY DATE 21589

INVENTRS QUEEN, CARY

MAIL DATE 21389 TYPE (L/O/P) L DISCL SENT( /Y) Y

FILING DATE 21389 SERIAL# 310252 GROUP 185 FIRST PUBLIC USE

REEL: 5042 FRAME: 376 RECD DATE 21389 ASSIGNEE PROTEIN DESIGN LABS

TITLE OF INVENTION: DESIGNING IMPROVED HUMANIZED IMMUNOGLOBULINS

P.O. ACTION

RESPONSE DUE

EXT

AMENDMENT DATED

STATUS DATE 122690

C=COMPLETE

P.O. ACTION

RESPONSE DUE

EXT

AMENDMENT DATED

STATUS DATE

C=COMPLETE

P.O. ACTION

RESPONSE DUE

EXT

AMENDMENT DATED

STATUS DATE

C=COMPLETE

NOTICE OF APPEAL DUE

NOTICE OF APPEAL EXT

SENT

APPEAL BRIEF DUE

APPEAL BRIEF EXT

SENT

INFORMAL

INFORMAL STATUS

\*N=NO MAINT. FEE N=NO FOR FILE

PARTS DUE

DRAWINGS DUE

PAID

ABANDONED

ALLOWED

ISSUE FEE DUE

PAID

ABANDONED

ISSUED

PATENT#

DELIVERED

PAID

ABANDONED

DISB DATE

CODE

AMT

DESC

CK1 FOR DIFF #

CK5 = OTHER ACTIONS

CK7 TO RESTART W/O CHANGE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
CARY L. QUEEN <u>ET AL.</u>	)	Examiner: M. Marks
Serial No.: 07/290,975	)	Art Unit: 185
Filed: December 28, 1988	)	<u>RESPONSE TO RESTRICTION</u>
For: NOVEL IL-2 RECEPTOR-	)	<u>REQUIREMENT</u>
SPECIFIC HUMAN IMMUNO-	)	
<u>GLOBULINS</u>	)	San Francisco, CA 94105

Commissioner of Patents and Trademarks  
Washington, D. C. 20231

Sir:

## REMARKS

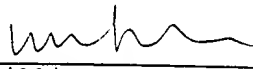
In response to the requirement for election and restriction, which is the only point raised in the Official Action, Applicants hereby provisionally elect Group I consisting of Claims 1-20 and 22-24, but traverse the requirement as to the other Groups. It is believed that all of the claims are so closely related to those designated in Group I that they should remain in the same application to preserve unity of invention. Contrary to the Examiner's statements, all relate generally to compositions comprising human-like immunoglobulins reactive with the human interleukin-2 receptor, and their use and production. Thus, all should be examined in a single application, accordingly.

The Examiner's statements regarding the relationship between the IL-2 receptor and "p55 Tac" and how "non-recombinant immunoglobulins specific for Tac" can be used are not understood. Clarification is requested.

With respect to the claims constituting Groups II and III, Applicants reserve the right to file a divisional application for the claimed subject matter. Applicants do not waive any of their rights or abandon any subject matter in the

non-elected claims. Since Applicants have fully and completely responded to the Official Action and have made the required election, this application is now in order for early action.

Respectfully submitted,  
TOWNSEND and TOWNSEND

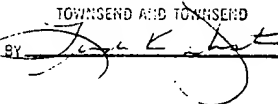
By   
William M. Smith  
Reg. No. 30,223

Date: 03-07-90

Telephone: (415) 326-2400

One Market Plaza  
Steuart Street Tower  
San Francisco, CA. 94105

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED  
WITH THE UNITED STATES POSTAL SERVICE / FIRST CLASS MAIL IN  
AN ENVELOPE FOR THE COMMISSIONER OF PATENTS AND  
TRADEMARKS, WASHINGTON, D.C. 20540, ON 7/11/21/99  
(DATE OF DEPOSIT)

TOWNSEND AND TOWNSEND  
DATE 7/11/21/99 BY 

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
CARY L. QUEEN <u>ET AL.</u>	)	Examiner: M. Marks
Serial No.: 07/290,975	)	Art Unit: 185
Filed: December 28, 1988	)	PETITION TO EXTEND TIME
For: NOVEL IL-2 RECEPTOR-	)	<u>UNDER 37 CFR §1.136(a)</u>
SPECIFIC HUMAN IMMUNO-	)	
<u>GLOBULINS</u>	)	San Francisco, CA 94105

Commissioner of Patents and Trademarks  
Washington, D. C. 20231

Sir:

Applicants petition the Commissioner of Patent and Trademarks to extend the time for response to the Office action dated November 7, 1989 for three months, from December 7, 1989 to March 7, 1990. An appropriate response to the Office Action in the form of a Response to Restriction Requirement is enclosed herewith.

Please charge \$215.00 to the Deposit Account No. 20-1430. Please charge any additional fees or credit overpayment to the above Deposit Account. This Petition is submitted in triplicate.

Respectfully submitted,

TOWNSEND and TOWNSEND

By William M. Smith  
Reg. No. 30,223

Date: 03-07-90

Telephone: (415) 326-2400

One Market Plaza  
Steuart Street Tower  
San Francisco, CA. 94105

I HEREBY CERTIFY THAT THIS CORRESPONDENCE WAS RECEIVED BY THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231, ON 7ME 1990  
(DATE OF DEPOSIT)

DATE 7ME 1990 BY TOWNSEND AND TOWNSEND

## TO THE U.S. PATENT OFFICE

Please stamp the date of receipt of the following document, and return this card to us.

Title of Document ..... RESPONSE TO RESTRICTION REQUIREMENTS, PETITION TO  
EXTEND TIME  
Date Due..... March 7, 1990  
Serial No. .... 07/290,975  
Date Mailed .... March 7, 1990  
File No. .... 11823-8  
Attorney ..... WMS

11823-9

## TO THE U.S. PATENT OFFICE

Please stamp the date of receipt of the following document, and return this card to us.

Title of Document ..... RESPONSE TO RESTRICTION REQUIREMENTS, PETITION TO  
EXTEND TIME  
Date Due..... March 7, 1990  
Serial No. .... 07/290,975  
Date Mailed .... March 7, 1990  
File No. .... 11823-8  
Attorney ..... WMS



90 JUN 22 PM 3:15

11823-9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
CARY L. QUEEN <u>ET AL.</u>	)	Examiner: M. Marks
Serial No.: 07/310,252	)	Art Unit: 185
Filed: February 13, 1989	)	VERIFIED STATEMENT OF
For: DESIGNING IMPROVED	)	<u>DEBRA B. HUDSON</u>
HUMANIZED IMMUNOGLOBULINS	)	
		San Francisco, CA 94105

Commissioner of Patents and Trademarks  
Washington, D. C. 20231

Sir:

I, Debra B. Hudson, declare and state as follows:

1. I am a docket clerk with the docket department (U.S.) at Townsend and Townsend, San Francisco, California. I have been a docket clerk at Townsend and Townsend since 1986.
2. I am responsible for handling incoming mail from the U.S. Patent and Trademark Office.
3. The following procedures and controls are utilized by the docket department with respect to correspondence received from the PTO:
  - i. When communications from the PTO are received in the mailroom, they are immediately date-stamped, and are then sent to the appropriate docketing department (U.S. or foreign). Mail is delivered from the mailroom directly to the docketing department, first thing each morning.
  - ii. On receiving the PTO communication in the docketing department, the docket clerk will enter the serial number of the application into the computer, to call up the appropriate docket file.
  - iii. The docket clerk will then put the working attorney's initials and the firm file number in red on the upper right hand corner of the document.

iv. The docket clerk will also place a red stamp reading "Response Due" on the front of the office action, and write in large red letters the date the response is due.

v. The docket clerk will then enter the PTO action and date, and the response due date into the computer docket sheet.

vi. The PTO communication is then immediately forwarded to the working attorney.

vii. Entries are also made in the computer docket when communications are sent from the working attorney to the PTO.

4. I was the docket clerk who handled the office action, mailed November 7, 1989, in Application Serial No. 07/290,975. The standard procedures and controls were followed in the situation at hand:

i. The docketing department received an office action in the case of Application Serial No. 07/290,975, which had been mailed on November 7, 1989, and had been date-stamped in the mailroom as received on November 10, 1989.

ii. I received that document, stamped and wrote the "Response Due" date (December 7, 1989) on the front of the document in red ink, wrote the working attorney's initial and the firm file number (WMS 11823-8) in the top right hand corner of the front page, and entered the relevant information into the computer docket. I signed my initials on the front page after the Response Due date (DBH).

iii. No office action was entered into the computer docket on that date, or any other date, for the case of Application Serial No. 07/310,252.

I further declare that all statements made herein of my own knowledge are true and that all statements made on

information and belief are believed to be true; and further that I make these statements with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: 6-19-90

Debra B. Hudson  
Debra B. Hudson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
CARY L. QUEEN <u>ET AL.</u>	)	Examiner: M. Marks
Serial No.: 07/310,252	)	Art Unit: 185
Filed: February 13, 1989	)	VERIFIED STATEMENT OF
For: DESIGNING IMPROVED	)	<u>MICHELE A. SIMONE</u>
HUMANIZED IMMUNOGLOBULINS	)	
	)	San Francisco, CA 94105

Commissioner of Patents and Trademarks  
Washington, D. C. 20231

Sir:

I, Michele A. Simone, declare and state as follows:

1. I am a docket clerk with the docket department (U.S.) at Townsend and Townsend, San Francisco, California.
2. I am responsible for handling incoming mail from the U.S. Patent and Trademark Office.
3. The docketing department received and entered into the computer docket a Notice of Abandonment for Application Serial No. 07/310,252, for failure to respond to an office action allegedly mailed November 7, 1989. The document was date-stamped as received on June 4, 1990. I received the document, and wrote the firm file number and working attorney's initials in red in the top right hand corner of the document.
4. I immediately checked to see if there was any record of receipt of the November 7, 1989 office action. There was none.
5. I forwarded the Notice of Abandonment to the working attorney. I did not "abandon" the case; that is, I did not enter the Notice of Abandonment on the docket sheet, awaiting instructions from the working attorney as to whether the case was or was not to be abandoned.

I further declare that all statements made herein of my

890103 000000

own knowledge are true and that all statements made on information and belief are believed to be true; and further that I make these statements with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: 6-19-90

Michele A. Simone  
Michele A. Simone

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JUN 20 1990

LAW OFFICES

# TOWNSEND AND TOWNSEND

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GEORGE M. SCHWAB  
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SUSAN M. SPAETH  
STEVEN P. KODA\*

ALBERT J. HILLMAN  
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K. T. CHERIAN  
JEFFREY L. WENDT  
KEVIN L. BASTIAN  
JAMES H. MEADOWS\*  
DEXTER B. LOUIE  
A. JAMES ISBESTER

CHARLES E. TOWNSEND, JR.  
JOHN L. MCGANNON  
OF COUNSEL

\*NOT ADMITTED IN CALIFORNIA

## PATENTS, TRADEMARKS, AND COPYRIGHTS

379 LYTTON AVENUE  
PALO ALTO, CALIFORNIA 94301  
(415) 326-2400  
FAX (415) 326-2422

SAN FRANCISCO OFFICE  
TWENTIETH FLOOR  
STUART STREET TOWER  
ONE MARKET PLAZA  
SAN FRANCISCO, CALIFORNIA 94105  
(415) 543-9600  
SAN FRANCISCO FAX (415) 543-5043

SEATTLE OFFICE  
1201 THIRD AVENUE  
SUITE 2600  
SEATTLE, WASHINGTON 98101  
(206) 467-9600  
SEATTLE FAX (206) 623-6793

CHARLES E. TOWNSEND (1904-1944)  
STEPHEN S. TOWNSEND (1942-1986)

WRITER'S DIRECT DIAL NUMBER:

October 24, 1990

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Attn: Ms. Ellen Scott - Group 180

Re: U.S. Serial No. 07/310,252  
Our File: 11823-9


Dear Ms. Scott:

Pursuant to your request of October 23, 1990, attached is a complete copy of our file wrapper and cited references for the above identified patent application. It is our understanding that the Patent Office Official Search has not located this file.

We appreciate your immediate processing of this file within the Group so that we may obtain a decision responsive to our Petition for Withdrawal of Holding of Abandonment filed June 20, 1990.

Yours very truly,

TOWNSEND and TOWNSEND

  
William M. Smith

WMS/1  
Encl. (as noted)  
\\wp50\\11823\\009.L02

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OCT 26 PM 1:15  
GROUP 180

TO THE U.S. PATENT OFFICE

Please stamp the date of receipt of the following document, and return this card to us.

Title of Document ..... PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT  
six exhibits, two verified statements  
Date Due.....  
Serial No. ....07/310,252.....  
Date Mailed ....June 20, 1990.....  
File No. ....11823-9.....  
Attorney .....WMS.....

RECEIVED  
JUN 22 1990  
6:00 PM

TO THE U.S. PATENT OFFICE

File 11823-9

Please stamp the date of receipt of the following document, and return this card to us.

Title of Document ..... PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT  
six exhibits, two verified statements  
Date Due.....  
Serial No. ....07/310,252.....  
Date Mailed ....June 20, 1990.....  
File No. ....11823-9.....  
Attorney .....WMS.....

# 4  
12/1/9

11823-9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
CARY L. QUEEN <u>ET AL.</u>	)	Examiner: M. Marks
Serial No.: 07/310,252	)	Art Unit: 185
Filed: February 13, 1989	)	<u>VERIFIED STATEMENT OF</u>
For: DESIGNING IMPROVED	)	<u>DEBRA B. HUDSON</u>
HUMANIZED IMMUNOGLOBULINS	)	
		San Francisco, CA 94105

Commissioner of Patents and Trademarks  
Washington, D. C. 20231

Sir:

I, Debra B. Hudson, declare and state as follows:

1. I am a docket clerk with the docket department (U.S.) at Townsend and Townsend, San Francisco, California. I have been a docket clerk at Townsend and Townsend since 1986.
2. I am responsible for handling incoming mail from the U.S. Patent and Trademark Office.
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244 11 94105

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  - v. The docket clerk will then enter the PTO action and date, and the response due date into the computer docket sheet.
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  - vii. Entries are also made in the computer docket when communications are sent from the working attorney to the PTO.
4. I was the docket clerk who handled the office action, mailed November 7, 1989, in Application Serial No. 07/290,975. The standard procedures and controls were followed in the situation at hand:
- i. The docketing department received an office action in the case of Application Serial No. 07/290,975, which had been mailed on November 7, 1989, and had been date-stamped in the mailroom as received on November 10, 1989.
  - ii. I received that document, stamped and wrote the "Response Due" date (December 7, 1989) on the front of the document in red ink, wrote the working attorney's initial and the firm file number (WMS 11823-8) in the top right hand corner of the front page, and entered the relevant information into the computer docket. I signed my initials on the front page after the Response Due date (DBH).
  - iii. No office action was entered into the computer docket on that date, or any other date, for the case of Application Serial No. 07/310,252.

I further declare that all statements made herein of my own knowledge are true and that all statements made on

07/290,975 2 -

89-1 12 25-0005

information and belief are believed to be true; and further that I make these statements with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: 6-19-90

Debra B. Hudson  
Debra B. Hudson

00000000

- 3 -

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MAY 29 1989

11823-9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of )  
CARY L. QUEEN ET AL. ) Examiner: M. Marks  
Serial No.: 07/310,252 ) Art Unit: 185  
Filed: February 13, 1989 )  
For: DESIGNING IMPROVED )  
HUMANIZED IMMUNOGLOBULINS )  
San Francisco, CA 94105

Commissioner of Patents and Trademarks  
Washington, D. C. 20231

DECLARATION OF WILLIAM M. SMITH

Sir:

I, William M. Smith, declare and state as follows:

1. I am an attorney of record for application Serial No. 07/310,252 filed February 13, 1989 ("the '252 application"), and also for application Serial No. 07/290,975, filed December 28, 1988 ("the '975 application"). The '252 application is a C-I-P application of the '975 application.
2. I received an Office Action, mailed November 7, 1989, requiring election or restriction in the '975 application.
3. On March 7, 1990, on behalf of Applicants, a timely response to the November 7, 1989 Office Action in the '975 application was filed.
4. I have never received any written Office Action in the '252 application.
5. Beginning on or about May 17, 1990, Examiner Marks and I had telephone conferences in which the Examiner, inter alia,

pages 2 thru 4 missing

confirmed receipt of the response in the '975 case and inquired about a response in the '252 case. This was the first notification I had received that there had been an official written action in the '252 case, and that a restriction or election was required. In that telephone conversation, Examiner Marks explained which claims were included in each of the three groups for restriction.

6. Upon learning of the restriction requirement, a response was diligently prepared on behalf of Applicants, which response is being mailed concurrently with this Declaration.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that I make these statements with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: 5-26-80

By: William M. Smith  
William M. Smith  
Reg. No. 30,223

\wp50\PDL\009.P01

93 JUN 02 PM 2:15

11823-9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
CARY L. QUEEN <u>ET AL.</u>	)	Examiner: M. Marks
Serial No.: 07/310,252	)	Art Unit: 185
Filed: February 13, 1989	)	VERIFIED STATEMENT OF
For: DESIGNING IMPROVED	)	<u>MICHELE A. SIMONE</u>
HUMANIZED IMMUNOGLOBULINS	)	
	)	San Francisco, CA 94105

Commissioner of Patents and Trademarks  
Washington, D. C. 20231

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Respectfully submitted,

Date: 6-19-90

Michele A. Simone  
Michele A. Simone

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of )  
 CARY L. QUEEN ET AL. ) Examiner: M. Marks  
 Serial No.: 07/310,252 ) Art Unit: 185  
 Filed: February 13, 1989 ) POWER TO INSPECT  
 For: DESIGNING IMPROVED )  
 HUMANIZED IMMUNOGLOBULINS )  
 \_\_\_\_\_ ) San Francisco, CA 94105

Commissioner of Patents and Trademarks  
 Washington, D. C. 20231

Sir:

This is to authorize Tommy L. Foster or Terri Ruggiero or David Yohannan of the firm of PRIOR ART SEARCHES, INC. whose address is Suite 304, 2001 Jefferson Davis Highway, Arlington, Virginia 22202-3603 to inspect the file of the above-identified patent application and to make copies of all or any part of the application and assignment records.

Respectfully submitted,

TOWNSEND and TOWNSEND

By William M. Smith  
 William M. Smith  
 Reg. No. 30,223

Date: 06-21-90

Telephone: (415) 326-2400

One Market Plaza  
 Steuart Street Tower  
 San Francisco, CA. 94105

\wp50\PDL\009.P05

07/310,252  
 1991 MAR 20 09:00 AM